

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAUNCY HARRIS,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240858

Wayne Circuit Court

LC No. 01-009899-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Defendant was convicted by a jury of unlawfully driving away a motor vehicle, MCL 750.413, and resisting and obstructing, MCL 750.479, and sentenced to concurrent prison terms of 18 to 60 months and 12 to 24 months, respectively, to be served consecutively to any other pending sentence. Defendant appeals as of right. We remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Concurrent sentencing is the norm. Consecutive sentences may not be imposed absent statutory authority. *People v Alvarado*, 192 Mich App 718, 720; 481 NW2d 822 (1992). “Whether the trial court properly sentenced a defendant to consecutive sentences is a question of statutory interpretation that is reviewed de novo.” *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003).

The court has authority to impose a consecutive sentence when the defendant commits one felony while another felony charge is pending. MCL 768.7b(2). That statute provides:

Beginning January 1, 1992, if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense . . . , the following shall apply:

(a) Unless the subsequent offense is a major controlled substance offense, the sentences imposed for the prior charged offense and the subsequent offense may run consecutively.

(b) If the subsequent offense is a major controlled substance offense, the sentences imposed for the prior charged offense and the subsequent offense shall run consecutively. [MCL 768.7b(2).]

The trial court was under the impression that a consecutive sentence was mandatory because defendant committed the instant offenses while on probation for a controlled substance offense. In so ruling, it erred. It is only where the controlled substance offense is the subsequent offense that consecutive sentencing is mandatory. In addition, the prior controlled substance offense was not a pending disposition because defendant had already been sentenced to probation. *People v Leal*, 71 Mich App 319, 321; 248 NW2d 252 (1976).

The prosecutor concedes error but contends that consecutive sentencing was nonetheless authorized because defendant had a charge of unlawful use of an automobile pending against him when he committed the instant offenses. Assuming that were true, the trial court could not have imposed a consecutive sentence unless defendant had already been convicted and sentenced on the unlawful use charge, *People v Chambers*, 430 Mich 217, 219, 230; 421 NW2d 903 (1988), and even then consecutive sentencing would be discretionary rather than mandatory. MCL 768.7b(2)(a).

We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello